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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,406	03/17/2004	Thomas Weisel	SUS1.PAU.02	5563
23386 7590 07/31/2009 Myers Andras Sherman LLP 19900 MacArthur Blvd. Suite 1150 Irvine, CA 92612				
EXAMINER				
NGUYEN, TUAN VAN				
ART UNIT		PAPER NUMBER		
3731				
MAIL DATE		DELIVERY MODE		
07/31/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/803,406

Applicant(s)

WEISEL ET AL.

Examiner

TUAN V. NGUYEN

Art Unit

3731

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7, 13, 15, 19-21 and 28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 and 28 is/are allowed.
- 6) ☒ Claim(s) 13, 15 and 19-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. In previous Office action claims 1, 5, 7, 13, 15, and 19-21 were pending and they were examined and rejected.
2. This Office action is in response to the amendment filed on May 6, 2009.

Response to Amendments

3. According to the Amendment, claims 1 and 5 have been canceled and claim 28 is new. Accordingly, claims 7, 13, 15, 19-21 and 28 are pending in this present application and they are presented for examination.

Response to Arguments

4. With respect to independent claim 13, applicant arguments have been fully considered but they are moot in view of new ground of rejection.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. **Claims 13, 15, and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toy et al (US 5,618,290) in view of Hart et al. (US 5,569,269).**
8. Toy et al disclose a device (1, Figures 2-12) comprising: a hollow elongate shaft (11) or a **needle housing**; a **bifurcated needle assembly** (6, 7, 8, 9), which defining a suture slot, disposed at the distal end of rod (3) movable back and forth with the actuating rod between an extended and retracted state; the needle assembly also comprising a **sharp distal tip** (6) integral with arm (7); a **handle assembly** (16 and 17) coupled to the shaft (11) wherein the handle assembly (16 and 17) is also a **needle latch** and having a releasable latching relationship with the needle; and a **thumb slide** (17) moveable on the handle housing in a proximal and distal position relative to the needle assembly creating a free suture state when distal and a captured/locked state when proximal (see col. 3, line 20 to col. 4, line 25). Toy discloses the invention substantially as claimed except for a needle housing lock is pivotal on the handle housing between an unlocking position and a locking position.

9. However, Hart discloses a suturing needle having the ability for snaring suture comprising (Figs. 34 and 36), among other things, a needle 500 located inside needle housing 604 and the needle housing coupling to the handle, a needle housing lock 710 is pivotal on the handle housing between an unlocking position and a locking position, wherein, in the unlocking position the needle housing and the needle 500 attached to the housing is capable to rotate, thereby, allow the user to reposition the needle tip (col. 15, lines 35-44). Therefore, it would have been obvious to one of ordinary skill in the art to incorporate the teachings of Hart into the handle, as disclosed by Toy, in order to gain the advantage as suggested by Hart.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TUAN V. NGUYEN whose telephone number is (571)272-5962. The examiner can normally be reached on M-F: 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, AnhTuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/T. V. N./
Examiner, Art Unit 3731

/Anh Tuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731
7/29/09